

Osborne Clarke LLP

**Agreement for the supply of services on a
sole trader basis**

1. Fortus Consultants Ltd
2. [Sole trader name]

22nd January 2017

Agreement DATED [].

Name of Parties

- (1) **Fortus Consultants Ltd** whose registered office is situated at **30 Petworth Street, SW11 4QW** ("**Company**"); and
- (2) The individual named as service provider in any "SOW" (or "SOW") schedule governed by these terms and conditions ("**Sole trader**").

Recitals

- (A) The Sole trader carries on the business of the provision of Services relating to all aspects of the project specified in the Statement of Work attached.
- (B) Company has requested the Sole trader, and the Sole trader has agreed with Company, to provide the Services on a deliverables basis in accordance with the terms of this Agreement.
- (C) The parties acknowledge that the tax and national insurance status of persons such as the Sole trader is often unclear and have agreed to adopt a cautious approach in relation to the tax status of the Sole trader. This Agreement accordingly ensures that Sole traders voluntarily pay an amount equivalent to the amount that would have been deducted from their salary had they been employees for pay as you earn income tax and national insurance contributions on their earnings, it being the intention of the parties to avoid uncertainty as to potential tax liabilities and to avoid potential complicated tax disputes with HMRC. Such payments will be reported via the Company's RTI.
- (D) The parties acknowledge that the Sole trader is a sole trader and is not an "agency worker" or "worker" and accordingly is not entitled to the statutory protections in the Agency Workers Regulations 2008 and National Minimum Wage Act 1998. Nevertheless the Company believes that the rates at which the Sole trader will be paid will exceed the national minimum wage from time to time in force whether or not expenses count towards the Sole trader's fee.

It is agreed as follows: -

1. Interpretations and definitions

1.1 In this Agreement, unless the context otherwise requires, the following definitions shall apply:

"**FPS**" means the company appointed by the Sole trader for the purposes of the matters contemplated by Clause 4.2.

"**Agreement**" means these terms and the SOW between the Sole trader and the Company relating to the provision of the Services (being the attached SOW in the case of a SOW in writing).

"**Data Protection Laws**" means the Data Protection Act 1998 or any non-UK equivalent, regulatory provisions and/or European Directives or European Regulations in force from time to time relating to the protection and transfer of personal data.

"**Document**" includes in addition to a document in writing any map, plan, graph, drawing or photograph, any film, negative, tape and/or device importing visual images, computer software and firmware and any disk, tape or other device importing or holding any other data.

"**Client**" means any client or customer of the Company for whose ultimate benefit, or at whose premises, the Services are performed by the Sole trader.

"**Fee**" means the Sole trader fee as set out in the SOW.

"**Loss**" means any demand, contribution, claim, action, proceeding, liability, loss, damage, costs, expenses, tax, national insurance contributions (to the extent permitted by law) and charges and any related penalties, fines or interest whatsoever whether founded in statute, contract, tort or otherwise made or brought against or incurred (including without limitation all losses, liabilities and costs incurred as a result of defending or settling any claims); the term "Losses" shall be construed accordingly.

"Services" means the services to be performed by the Sole trader under this Agreement and as set out in the SOW.

"Security Industry Authority" "SIA" means the organisation responsible for regulating the private security industry in the UK which reports to the Home Secretary, under the terms of the Private Security Industry Act 2001.

"Statement of Work" or "SOW" means the project detailed in (i) the written SOW attached to this Agreement, or (ii) (in the absence of any written SOW) any orally agreed project terms between the Sole trader and the Company, any booking confirmation and site specific Assignment Instructions given to the Sole Trader by the company and which the Sole trader is engaged by the Company to perform and deliver to Clients.

- 1.2 Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.
- 1.3 Each term starting with a capital letter and not defined in this clause or elsewhere in this Agreement is as defined and/or agreed in the SOW.
- 1.4 Where the context permits, words denoting:
 - (a) Persons shall include bodies corporate and unincorporated associations of persons;
 - (b) The singular include the plural and vice versa; and
 - (c) One gender shall include any gender.

2. **SOW terms**

- 2.1 This Agreement shall commence on the Start Date in the SOW and continue until the earliest of:
 - (a) the expiry date in such SOW or, if no expiry date is specified, the date on which all work under such SOW is completed in accordance with the terms and conditions of this Agreement; and
 - (b) the date upon which such SOW is terminated in accordance with its terms and conditions or in accordance with Clause 7.
- 2.2 The Sole trader will perform the Services using such suitably qualified, skilled and experienced personnel as the Sole trader may consider appropriate (taking into account any specific skills, experience or qualifications required by the Company).
- 2.3 The Sole trader shall be entitled to assign or sub-contract the performance of the Services provided that Company is reasonably satisfied that the assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Services to the required standard and that the terms of any such sub-contract contain the same obligations as this Agreement. This has to be in strict agreement with the company, in writing. No changes to the individuals performing the Services shall be made without the Company's written approval. If the Company does not approve the proposed substitution, the Company shall have the right to terminate this Agreement by notice to the Sole trader with immediate effect.
- 2.4 Save as otherwise stated in this Agreement, the Sole trader shall be entitled to supply his services to any third party during the term of this Agreement provided that this in no way creates a conflict of interest or is to the detriment of the supply of the Services.
- 2.5 No variation or alteration of the terms of this Agreement shall be valid unless approved by the Company and the Sole trader in writing. The parties will agree on the scope and implications of the requested change(s), any related amendments to price and any implications on the parties' obligations under these Terms and Conditions.
- 2.6 The Company shall be under no obligation to compensate the Sole trader for any work carried out which falls outside the scope of the Services or for days on which the Sole trader does not perform Services.

3. **Sole trader Obligations**

3.1 The Sole trader warrants that:

- (a) by entering into and performing his obligations under this Agreement he will not be in breach of any obligation which he owes to any third party;
- (b) the Sole trader has/have the necessary skills, qualifications and experience to perform the Services (including, but not limited to, holding any necessary SIA licences required to perform the Services) ;
- (c) the Services will be performed with reasonable skill and care and will conform substantially with SIA requirements and the Company's specification; and
- (d) the Sole trader has a valid right to work and remain for the duration of the SOW, in the jurisdiction in which the Services are performed.

3.2 The Sole trader agrees:

- (a) not to engage in any conduct detrimental to the interests of the Company or Client, which includes any conduct tending to bring the Company or Client into disrepute or which results in the loss of custom or business;
- (b) to comply with any statutory or other rules or obligations including but not limited to those relating to health and safety and SIA requirements (to the extent that any instruction, management or co-ordination is required by a Sole trader pursuant to SIA regulation, the Sole trader agrees only to accept such instruction, management or co-ordination from SIA licenced individuals such as the Company's personnel) to the extent that they are reasonably applicable to them while performing the Services and to take all reasonable steps to safeguard his and their own safety and the safety of any other person who may be affected by his actions;
- (c) to furnish the Company and/or, Client with any progress reports as may be requested from time to time;
- (d) to renew any SIA licence it holds before expiry of such license;
- (e) to provide at his own cost, subject to any agreement to the contrary specified in the SOW, all such necessary equipment and training as is reasonable for the adequate performance of the Services.

3.3 The Sole trader shall generally determine the method of performance of the Services but in doing so it shall co-operate with the Company and Client in working towards meeting the agreed milestones or deliverables.

3.4 The Sole trader shall account to the appropriate authorities for all tax and National Insurance Contributions payable in respect of sums paid to the Sole trader in connection with their performance of services in relation to the Services.

3.5 The Sole trader agrees that where any work results are reasonably deemed substandard or defective by the Company, the Company may request that the Sole trader remedy all or some of the substandard or defective Services at the Sole trader's own cost.

3.6 The Sole trader shall indemnify and keep indemnified the Company and the Client against any and all Losses whatsoever and howsoever incurred resulting or arising from any of the following:

- (a) the Sole trader's negligent acts or omissions and/or wilful misconduct;
- (b) the Sole trader's failure to comply with his obligations under Clause 3.1, 3.2, 3.3 3.4 and/or 3.5 above; and
- (c) the Sole trader claiming, or being deemed, to be an employee, agency worker or worker (including a worker for the purposes of section 44 of the Income Tax(Earnings and Pensions) Act 2003) of the Company or the Client

3.7 The Company may set off against any other sums due to the Sole trader the amount from time to time due to it in respect of Clause 3.6 including the cost (in its reasonable opinion) of

remedying any defects in the Services to the extent the Company remedies or procures the remedy of the same.

3.8 The Sole trader shall not directly or indirectly (other than via Company) discuss, negotiate or otherwise make arrangements with the Client regarding fees or SOW details.

4. **Sole trader status**

4.1 The parties acknowledge that the Sole trader is not an employee, worker, agency worker, agent, partner or servant of Company (or the Client) and accordingly:

- (a) this Agreement is not an exclusive arrangement and (subject to Clause 2.3) nothing shall prevent the Sole trader from engaging in other services for any third party;
- (b) the manner and means of performing the Services, including days and hours worked, are subject to the Sole trader's sole control and discretion (subject always to any reasonable requirements from the Client as where and when Services are required), working to the overall objectives and specifications as set out in the SOW and any local site rules, SIA requirements and regulations of the Client deemed necessary for the purposes of health and safety and security and the like;
- (c) the Sole trader shall where appropriate provide his own equipment and uniform subject to them being of suitable quality and subject also to any Company requirements (for example for technical, security or health and safety reasons) that its equipment or tools be used;
- (d) the Sole trader shall comply with the provisions of any legislation (and any relevant government best practise guidance) in respect of immigration, visas and/or border control as necessary for the purposes of this Agreement ("**Immigration Requirements**");
- (e) the Sole trader warrants, covenants and undertakes that:
 - (i) the information provided by the Sole trader concerning the tax status of the Sole trader is full, up to date and accurate; and
 - (ii) the Sole trader shall not act under the control supervision or direction of the Company, the Client or any other person;
- (f) the Sole trader warrants that it operates on a business to business basis such that the supply it makes under this Agreement is one of security services to or for the benefit of Company to enable the Company to supply security guarding services on an outsourced basis to its Clients. Accordingly, the Sole trader agrees that it does not intend or regard the supply of Services made under this Agreement to fall within the scope of the protections afforded to "agency workers" under the Temporary Agency Worker Regulations 2010.

4.2 The parties acknowledge that the tax and National Insurance status of persons such as the Sole trader is often unclear and have agreed to adopt a cautious approach in relation to the tax status of the Sole trader. Accordingly the Sole trader:

- (a) hereby authorises the Company to deduct (and appoints the Company and/or its payroll agent) any sums (including sums payable by the Sole trader in respect of PAYE or under chapters 7, 8 or 9 of ITEPA or National Insurance Contributions) which the Company reasonably considers would be due to HMRC if HMRC decided that the Sole trader was not genuinely a sole trader and/or if the manner in which the Sole trader provided his/her services was subject to (or to the right of) supervision, direction or control by any other person and/or that, as such, relevant payments were subject to the relevant ITEPA chapters. This appointment and role of the Company (and/or its payroll agent) shall be without prejudice to the obligations of the Sole trader under clause 3 save that to the extent an amount is deducted by the Company in respect of tax or National Insurance Contributions relating to the Sole trader and then not paid to HMRC in respect of the same, the obligation in clause 3.4 shall not apply to the Sole trader. For the avoidance of doubt any payment to the Sole trader of fees without deduction for

PAYE or under chapter 7 of ITEPA or National Insurance Contributions does not constitute a representation or warranty by the Company that tax or National Insurance Contributions relating to fee payments under this Agreement to the Sole trader are not due and the Sole trader shall be obliged to discharge such obligations him/herself;

- (b) hereby authorises the Company (and/or its payroll agent) to administer any expenses in respect of which a tax deduction may be due in connection with the Sole trader's end of year self-assessment on such notional, estimated and interim bases as the Sole trader may from time to time wish. The Company is authorised to and shall be entitled to pay to the Sole trader (without deduction of deemed tax) in respect of these potentially tax deductible expenses when it pays to the Sole trader the Fees in accordance with clause 5. The final calculation of tax deductible expenses shall be in accordance with clause 4.2(b) and the Sole trader shall be responsible for paying any tax or national insurance contributions in addition to those already accounted for by the Company;
- (c) shall cooperate fully with the Company (and/or its payroll agent) in relation to the matters described in clause 4.2 (a) and 4.2 (b) including the provision of such information and signing of such documents and giving of such authorities as the Company shall from time to time require and payment of such fees as the Company (and/or its payroll agent) and the Sole trader may from time to time agree; and
- (d) acknowledges that the Company may at its option cease by notice to the Sole trader at any time to provide the elective deduction and expenses administration services described in this clause 4.2.

5. Invoicing and Fees

- 5.1 The Sole trader appoints the Company (and/or their payroll agent) to issue self-billed invoices completed in accordance with the payment terms agreed in the SOW for all supplies made by the Sole trader to the Company and shall not raise invoices himself. The Fees are inclusive of any fees payable in respect of services by Sole trader personnel. For the avoidance of doubt the Sole trader shall be responsible for all such payments.
- 5.2 Unless otherwise agreed in writing the Sole trader shall not be entitled to claim from the Company (or the Client) any expenses incurred in connection with the performance of the Services. The Fees are inclusive of any such expenses. If there are expenses in respect of which a tax deduction may be due in connection with the Sole trader's end of year self-assessment then the provisions of clause 4.2 shall apply.
- 5.3 Company will pay only for Client approved activities performed by the Sole trader as identified under the SOW. Work performed but not identified in the SOW will not be compensated unless approved by an authorised representative of the Company and Client in advance of the work's performance.

6. Company's obligations

- 6.1 Company shall furnish the Sole trader with sufficient information about the SOW in order for the Sole trader to arrange for the Services to be carried out.
- 6.2 Company will advise the Sole trader of any health & safety information, advice and/or other Client policies or security procedures, which it receives from the Client, which may affect or be relevant to the Consultant(s) during the SOW.

7. Termination

- 7.1 This Agreement shall commence on the earlier of the date on which the SOW is signed and the Start Date and shall continue until the Estimated Completion Date (or extension thereof as agreed between the parties) at which time this Agreement shall expire automatically unless previously terminated by Company or the Sole trader giving the other party the period of notice specified in the SOW.
- 7.2 Notwithstanding clause 7.1 of this Agreement, Company may without notice and without liability notify the Sole trader to cease work on the SOW at any time, where:

- (a) the Sole trader has committed any serious or persistent breach of any of his obligations under this Agreement;
- (b) the Company or Client reasonably believes that the Sole trader has not observed any condition of confidentiality applicable to the Sole trader from time to time;
- (c) the Sole trader becomes insolvent, or bankrupt, or makes any composition with his creditors;
- (d) Company and/or the Client have reasonable grounds to believe that any of the Sole trader has committed an act or omission of dishonesty, fraud, incompetence or negligence; or is convicted of any indictable criminal offence;
- (e) Company receives or obtains information which gives Company reasonable grounds to believe that the Sole trader is unsuitable to provide the Services;
- (f) Clause 2.3 is not complied with.

7.3 Failure by the Sole trader to give notice of termination as required in the SOW shall constitute a breach of contract. .

7.4 The Sole trader acknowledges that the continuation of the SOW is subject to and conditioned by the continuation of the contract entered into between the Company and its Client. In the event that the contract between the Company and the Client is terminated for any reason the SOW shall cease with immediate effect without liability to the Company.

8. **Confidentiality**

8.1 In order to protect all information relating to the Company's or any Client's business and affairs (including, for the avoidance of doubt, Sole trader Fee rates) ("**Confidential Information**") and without prejudice to every other duty to keep secret all information given to it or gained in confidence as a result of this Agreement the Sole trader agrees as follows:

- (a) not at any time whether during or after the SOW (unless expressly so authorised by the Company or the Client) to disclose to any person or to make use of any Confidential Information;
- (b) to deliver up to the Company or the Client (as directed by the Company) at the end of the SOW all documents and other materials belonging to the relevant person (and all copies) or any other Confidential Information which are in his possession including documents and other materials created by it during the course of the SOW;
- (c) without delay to enter into confidentiality undertakings that the Company or the Client may require the Sole trader to enter into;
- (d) not at any time remove or to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Company or the Client or any other Confidential Information except (i) when required to do so in accordance with this Agreement or the SOW or (ii) where expressly authorised to do so by the Company or Client (as appropriate) and in which event any such item shall belong to the Company or Client (as appropriate).

9. **Restriction**

9.1 The Sole Trader undertakes that they will not, in any circumstance, independently or jointly with any other party, firm or company, solicit the Customer for the purpose of offering to the Customer any good or services similar to or materially competing with those of Fortus.

10. **Liability**

10.1 The Sole trader shall be liable for and indemnify Company and the Client against any and all Loss, damage or injury to any party arising in connection with any breach of this Agreement, or otherwise resulting from the Sole trader's negligent or wrongful acts or omissions during the SOW.

- 10.2 The Sole trader shall, throughout the SOW and for a period of 6 months following the completion or termination of the SOW hold appropriate insurances as required by the Company and/or the Client from time to time and shall supply the Company with evidence of cover on request.
- 10.3 Except in respect of injury to or death of any person and subject to the express terms of this Agreement, the liability of Company to the Sole trader for Loss or damage arising out of or in connection with any breach of Company's obligations under this Agreement in respect of each event or series of connected events shall not exceed the greater of the amount of the SOW fee due and payable under this Agreement and £500.
- 10.4 Subject to the express terms of this Agreement neither Company nor the Sole trader shall be liable to the other in connection with the exercise of his rights or the performance of his obligations under this Agreement for any indirect loss whether arising from negligence, breach of contract or howsoever.

11. **Data protection**

- 11.1 The Sole trader warrants that in relation to this Agreement, it shall comply strictly with all provisions applicable to it under the Data Protection Laws.
- 11.2 The Sole trader hereby consents to the Company (and its representatives, including FPS) and the Client processing the Sole trader's personal data for purposes connected with the provision of the Services and pursuant to this Agreement.
- 11.3 The Sole trader shall indemnify Company for any Losses Company incurs or suffers arising from any breach of the warranty contained in this Clause 11.

12. **General**

- 12.1 This Agreement shall be construed in accordance with the laws of England & Wales and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of this Agreement shall be subject to the exclusive jurisdiction of the English courts.
- 12.2 This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements and arrangements (if any) whether written, oral or implied between the Company and the Sole trader relating to the supply of the Services and all such agreements still effective at the date of this Agreement (if any) shall (without prejudice to the rights of the Company arising prior to the Start Date in respect of prior breaches by the Sole trader of which the Company is not aware) be deemed to have been terminated by mutual consent with effect from the Start Date but so that nothing in this Clause 12.2 shall operate to exclude or limit the liability of any party in respect of fraud.
- 12.3 The Sole trader acknowledges that, in entering this Agreement, it has not relied on any representations by the Company, FPS or the Client made before the execution of this Agreement other than those expressly set out in this Agreement.
- 12.4 No amendment to this Agreement is effective unless it is in writing and signed by or on behalf of each party by a person duly authorised by that party.
- 12.5 Any notice required to be given under this Agreement (including the delivery of any timesheet or invoice) shall be in writing signed by a person duly authorised by the sending party and delivered by hand, sent by e-mail or prepaid first class post to the recipient at his or its fax number or address specified in this Agreement (or as otherwise notified from time to time to the sender by the recipient for the purposes of this Agreement).
- 12.6 The restrictions contained in this Agreement are considered reasonable by the parties, but, if any such restriction is found void but would be valid if some part of the restriction were deleted, such restriction shall apply with such deletion as may be necessary to make it valid and effective.
- 12.7 Save as set out in Clauses 3.5 and 11.1, none of the provisions of this Agreement is intended to be for the benefit of, or enforceable by third parties (other than permitted assignees and, in the case of Clause 4.2, any Accounting Services Provider) and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

X

For and on behalf of *[insert Sole trader name]*

Print Name

Position

Date

X

For and on behalf of

Print Name

Position

Date

Schedule 1

Statement of Work Schedule

Subject to the terms of the SOW Agreement dated [xxxxxx]

BETWEEN: Fortus Consultants Ltd and [insert name of Sole trader]

Project Title: Security Services

Services Description

Provision of security services at one or more establishments as indicated below:

| | |
|------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Company | Fortus Consultants Ltd |
| Client Address | Multi-site |
| Start Date | [complete as appropriate] |
| Estimated Completion Date | [complete as appropriate] |
| Estimated timings for delivery of : Phase 1 Phase 2 | The Sole trader shall agree with the Company the phases or stages of the project next to be delivered and the fee payable for that phase or stage upon confirmation of each booking |
| Location of project | multi-site |
| Sole trader Notice Period | 7 DAYS |
| Company Notice Period | 24 hours |
| Insurance | |
| Professional indemnity cover | £1mill per claim or series of claims |
| Public liability insurance | £2mill per claim or series of claims |
| Employers' Liability | |
| Additional Information | <ul style="list-style-type: none">• Each site will have its own specific Assignment Instructions which will be given to the sole trader before commencement. The sole trader must work to the terms in the Assignment Instructions specific to the site they attend.• Security personnel will ensure that they are fully SIA licensed at all times and will keep their badges on their person and visible at all times. |

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**Schedule 2
Self-Billing Process**

| SELF BILLING AGREEMENT | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Details needed | Details supplied |
| Sole trader | <i>[insert full Sole trader name] (A)</i> |
| The self-biller (Company) agrees (via its agent FPS to issue self-billed invoices for all supplies made to them by the self-billee (Sole trader) until the following date: | Ongoing |
| Company agrees (via its agent FPS) to complete self-billed invoices showing the Sole trader's name, address | Company agrees by accepting Sole trader |
| Company agrees to inform the Sole trader if the issue of self-billed invoices will be outsourced to a third party | Company agrees by accepting Sole trader |
| The Sole trader agrees to accept invoices raised by Company on its behalf until the following date: | <i>(insert date the assignment is due to end if known or insert a date 2 years in advance of today's date)</i> ... / ... / ... 12 month refresh as per HMRC rules] |

SELF BILLING AGREEMENT

| Details needed | Details supplied |
|----------------------------------------------------------------------------------------------------------|--------------------------------------------|
| The Sole trader agrees not to raise sales invoices for the transactions covered by this Agreement | Sole trader agrees by accepting Assignment |
| Company's signature | Company accepts by accepting Sole trader |
| Date: | ... / ... / ... (A) |
| Sole trader signature | Sole trader agrees by accepting SOW |
| Date: | ... / ... / ... (A) |

PLEASE NOTE: FPS shall produce the self-bill on behalf of and as agent for the Self-Biller. If FPS does not receive a copy of the Self Billing Agreement from the Sole trader and Company then the Company and Sole trader will be deemed to have agreed with the Self Billing Agreement upon commencement of a SOW.